

PROFESSIONAL SPORTS & FAMILY LAW:
LOCKOUT DOES NOT NECESSARILY EQUAL SUPPORT MODIFICATION

As of July 1, 2011, both the National Football League (NFL) and the National Basketball Association (NBA) are embroiled in labor disputes, which have resulted in the owners instituting “lockouts” against the players. This battle of millionaires versus billionaires has spurred a number of professional athletes, either at the behest of their agents or on their own, to file petitions to modify their child support obligations.

Articles posted on solo-practitioner’s websites, as well as on corporate news sites, have greatly oversimplified this matter. These articles would have both the athletes and their dependents believe that due to the lockout, they are certain to have their petitions for modification of child support granted. Regardless of which side of the issue an individual falls, the professional athlete-payor, or the mother and/or former spouse-payee, receiving a child support modification is not as simple as filing the initial petition for modification.

The athlete’s argument for modification is simple and succinct; it goes as follows:

Player X plays professionally in the NFL or NBA. On or about March 4, 2011, or July 1, 2011, the NFL and NBA respectively instituted lockouts. A substantial change in circumstance has occurred as a result of said lockout. Player X is no longer earning money pursuant to his contract and cannot afford to pay the previously ordered amount of child support. Player X respectfully requests that his child support obligation be reduced.

The above argument is overly simplistic for three reasons: (1) Players (for the most part) do not receive compensation during the off-season; (2) Child support is payable from both income and assets; and (3) the substantial change in circumstances cannot be prospective.

(1) A Lockout does not necessarily constitute a Substantial Change of Circumstances.

Whether or not the recent lockouts constitute a substantial change in circumstances is a question of fact. Per the Collective Bargaining Agreements of the respective leagues, players do not receive salary compensation during the off-season. NFL players are scheduled to receive their first checks in September and NBA players usually receive their initial checks in November. Yes, there may be other types of compensation, such as off-season workouts, or payment for previous year's performance incentives; however, such payments are usually contingent on some aspect of a player's participation or performance and may not be payable until the first game of the regular season.

Whether you are the petitioning party or the respondent, it is important to thoroughly review the player's NFL or NBA contract for the specific provisions that entitle him to receive compensation and identify when the franchise is obligated to remit said compensation. In addition, a player's marketing contracts must be examined. Regardless of national acclaim, many athletes receive apparel endorsements, appearance fees and/or other marketing based compensation, all of which are important when determining ability to pay or if a substantial change in circumstances has occurred.

(2) Child Support is payable from both income and *assets*.

Athletes requesting modifications must assert that their income is being adversely affected as a direct result of the lockout. However, be aware that child support obligations are payable from both income and *assets*. In Illinois, 750 ILCS 5/505(a) of the Illinois Marriage and Dissolution of Marriage Act only explicitly states that child support is to be paid from income. However, case law has established that section 505(a) does not restrict a court from ordering the payment of support from *assets*, as well as income. A current financial disclosure statement showing income and expenses as well as the player's assets may make the difference in the Judge granting a modification. Even if an athlete can prove the lockout has resulted in a substantial change of circumstances, the court may still determine that he has sufficient assets from which to satisfy a child support obligation and may order him to liquidate retirement accounts, sell the second

home or divest himself of his newest Bentley Continental GT in order to satisfy a child support award.

(3) The Substantial Change must have occurred between the entry of the initial child support order and the filing of the petition.

In Illinois, a petition for modification cannot be based on prospective events. The substantial change in circumstances must have occurred between the entry of the current support order and the filing of the petition for modification, meaning that most athletes' petitions for modification, if filed prior to the scheduled start of the season, will be premature. Before drafting petitions and securing hearing dates, it may be more prudent to reach out to the opposing party and come to an agreement in the event that the lockout does run into the respective leagues' regular seasons.

Sports fans are not the only parties lamenting the potential long term effects of the lockouts. As each day passes without an agreement, athletes, agents, and the athletes' families are becoming increasingly anxious. In the meantime, interested parties need to seek out and consult with an experienced family law attorney prior to filing, or responding to, a Petition for Modification of Child Support Obligation.

As in all things in life and sport, the reality of both is more nuanced than most people realize.

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